

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**UNITED STATES SECURITIES
AND EXCHANGE COMMISSION,**

Plaintiff,

v.

**EQUITYBUILD, INC., EQUITYBUILD
FINANCE, LLC, JEROME H. COHEN,
and SHAUN D. COHEN,**

Defendants.

Civil Action No. 18-cv-5587

Hon. John Z. Lee

Magistrate Judge Young B. Kim

**RECEIVER’S MOTION FOR COURT APPROVAL
TO RETAIN COUNSEL ON CONTINGENCY BASIS**

Kevin B. Duff, as the receiver (“Receiver”) for the Estate of Defendants EquityBuild, Inc., EquityBuild Finance, LLC, their affiliates, and the affiliate entities of Defendants Jerome Cohen and Shaun Cohen (collectively, the “Receivership Defendants”), and pursuant to the powers vested in him by the Order of this Court entered on August 17, 2018, intends to retain Damian & Valori, LLP as lead counsel and Rachlis Duff & Peel, LLC as local and supporting counsel (together, “Counsel”) to perform certain legal work, including investigation, advice, and representation in connection with claims the Receiver may bring on behalf of the Receivership Estate or one or more entities within the Receivership Estate. The Receiver respectfully moves this Court for an order approving the retention of the Counsel. In support of his Motion, the Receiver states as follows:

1. Pursuant to the Securities Act of 1933 and the Securities Exchange Act of 1934, the Securities and Exchange Commission sought and obtained the appointment of the Receiver. Under the order appointing the Receiver, the Receiver has authority in equity, as well as under

28 U.S.C. §§ 754, 959, and 1692, and Fed. R. Civ. P. 66, and was given broad powers to investigate and safeguard the assets of Receivership Defendants. Among other powers, the Receiver may engage attorneys as the Receiver deems advisable or necessary in the performance of the Receiver's duties and responsibilities under the Order Appointing Receiver. (*See* Order, Dkt. No. 16, ¶ 54) The Receiver also is authorized to solicit persons and entities to assist him in carrying out the duties and responsibilities described in the Order Appointing Receiver. (*Id.* ¶ 68) The Order also provides that the Receiver shall not engage any Retained Personnel without first obtaining an order of the Court authorizing such engagement. (*Id.*)

2. The Receiver has determined that there is a substantial need to retain the Counsel to perform the following services, namely to perform certain legal work including investigation, advice, counsel, and representation in connection with claims the Receiver may bring on behalf of the Receivership Estate or one or more entities within the Receivership Estate. The Counsel will represent the Receiver in connection with potential claims against third parties that have aided and abetted, enabled, facilitated, and/or been unjustly enriched by the fraudulent scheme operated by EquityBuild. The Receiver may seek, among other legal and equitable relief, the imposition of constructive trusts, disgorgements of fees, asset turnover, avoidance of fraudulent transfers, rescission and restitution, collection of debt, and such other relief from the Court as may be necessary to enforce the Order. The potential claims that are the subject of this motion are not against claimants who are institutional or investor lender claimants in this matter; nor are the potential claims the same as the prior claims for which the Receiver sought approval to retain additional counsel. (Dkt. No. 759)

3. Damian & Valori, LLP is a law firm in Miami, Florida that has substantial experience in bringing the types of claims in receivership actions contemplated by this

engagement, including in matters pending in the Northern District of Illinois. Rachlis Duff & Peel, LLC has substantial knowledge and experience in connection with the SEC action, including with respect to its investigation and analysis of potential claims, that will allow it to support the efforts of Damian & Valori, LLP and streamline its efforts.

4. The Receiver will plan to rely on Damian & Valori, LLP as lead counsel to pursue the claims contemplated by this engagement and will make efforts to limit the role of Rachlis Duff & Peel, LLC to reduce the impact of pursuing such claims on other activities for which Rachlis Duff & Peel, LLC has primary responsibility in the receivership action.

5. The Counsel have represented that they do not have any conflicts of interest and do not hold or represent an interest materially adverse to the interests of the Receivership Estate.

6. The Order Appointing Receiver provides that the Receiver and Retained Personnel are entitled to reasonable compensation and expense reimbursement from the Receivership Estate and that such compensation shall require the prior approval of the Court. (Dkt. No. 16, ¶ 69) The Counsel will seek compensation from the Receivership Estate solely on a contingency basis and only subject to the review of the SEC and the approval of the Court prior to any payment of compensation. The Receiver and/or his existing counsel will also participate in the prosecution of such claims, in the limited role described above, and any fees and expenses associated therewith would also be contingency-based and subject to the review of the SEC and the approval of the Court prior to any payment of compensation.

7. The SEC does not object to this Motion.

WHEREFORE, the Receiver respectfully requests that this Court grant this Motion and enter the Order approving retention of Damian & Valori, LLP and Rachlis Duff & Peel, LLC on a contingency basis, and grant such other relief as the Court deems just and proper.

Dated: February 7, 2022

Kevin B. Duff, Receiver

By: /s/ Michael Rachlis
Michael Rachlis
Jodi Rosen Wine
Rachlis Duff & Peel, LLC
542 South Dearborn Street, Suite 900
Chicago, IL 60605
Phone (312) 733-3950
mrachlis@rdaplawnet
jwine@rdaplawnet

EXHIBIT A

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
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**UNITED STATES SECURITIES
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Defendants.

Civil Action No. 18-cv-5587

Hon. John Z. Lee

Magistrate Judge Young B. Kim

**ORDER APPROVING RECEIVER’S MOTION
TO RETAIN COUNSEL ON CONTINGENCY BASIS**

Kevin B. Duff, as the receiver (“Receiver”) for Estate of Defendants EquityBuild, Inc., EquityBuild Finance, LLC, their affiliates, and the affiliate entities of Defendants Jerome Cohen and Shaun Cohen (collectively, the “Receivership Defendants”), having filed a Motion for Court Approval to Retain Counsel on Contingency Basis, the Court having considered the Motion and for good cause shown,

IT IS HEREBY ORDERED THAT:

The Receiver’s Motion is granted. The Court approves the Receiver’s engagement of Damian & Valori, LLP and Rachlis Duff & Peel, LLC on a contingency, with any compensation due thereby being subject to SEC review and Court approval.

Entered:

Honorable John Z. Lee

Date: _____

CERTIFICATE OF SERVICE

I hereby certify that I provided service of the foregoing Receiver's Motion for Court Approval to Retain Counsel on Contingency Basis, via the Court's CM/ECF system, to all counsel of record on February 7, 2022.

/s/ Michael Rachlis

Michael Rachlis
Rachlis Duff & Peel, LLC
542 South Dearborn Street, Suite 900
Chicago, IL 60605
Phone (312) 733-3950
Fax (312) 733-3952
mrachlis@rdaplawnet